Santa Clara Law Review

Volume 55 | Number 4 Article 6

10-7-2015

People v. Nguyen: A Modern Look at the Use of Juvenile Adjudications as Strike Offenses Under the Three Strikes Law

Kristen Orlando

PEOPLE V. NGUYEN: A MODERN LOOK AT THE USE OF JUVENILE ADJUDICATIONS AS STRIKE OFFENSES UNDER THE THREE STRIKES LAW

Kristen Orlando*

TABLE OF CONTENTS

* Symposium Editor, Santa Clara Law Review, Vol. 55; J.D., Santa Clara University School of Law, 2015; B.S., Kinesiology, B.A., Communications, Notre Dame de Namur University, 2010; I would like to thank Santa Clara University School of Law, specifically Professor Stephanie Widman and Seth Flagsberg for their support in the research and writing of this Comment. I would like to pay special recognition to the wonderful Vol. 55 Board of Editors, as well as the Vol. 56 Board of Editors for their diligent review of this Comment. Lastly and most importantly I would like to thank my family and friends for their support and encouragement throughout the writing process.

INTRODUCTION

Vincent Nguyen's journey through California's criminal justice system highlights the use of adjudications under California's Three Strikes law.[1] The case law illuminates the continued transformation of juveniles being treated as adults and the modern flawed approach of equating juvenile adjudications to criminal adult convictions. California's Three Strikes law inappropriately allows for juvenile adjudications to enhance an adult sentence in the same way a serious or violent adult felony does, thus eliminating the confidential and rehabilitative nature of the juvenile justice system.[2] The lack of constitutional safeguards within the juvenile system requires a continued separation between the adult and juvenile offender.

This Comment begins with a brief background of the creation of the juvenile justice system and the implications California's Three Strikes law has on a juvenile adjudication. An in-depth look of Vincent Nguyen's journey through California's judicial system highlights the use of a juvenile adjudication as a strike offense in a subsequent adult proceeding. This case study goes through a comprehensive analysis of the reasoning of the Sixth District Court of Appeal in its decision to bar the use of Nguyen's adjudication under the Three Strikes law and

1. *See* People v. Nguyen, 146 Cal. App. 4th 1332 (2007); People v. Nguyen, 152 Cal. App. 4th 1205 (2007); People v. Nguyen, 209 P.3d 946 (2009).

2. *See* CAL. PENAL CODE § 667 (d)(3) (Deering, 2013).

ultimately its reversal by the California Supreme Court.[3] Specifically, this section addresses the United States Supreme Court decision in *Apprendi v. New Jersey*[4] and how it applies to the Three Strikes law. The case law is followed by a short explanation of the flaw within California's Three Strikes law and an analysis of whether the binding California Supreme Court decision was the right decision. Although the Sixth District Court of Appeal decision was reversed, its arguments are highly persuasive and warrant a second look by the California Supreme Court. This Comment then concludes with a suggested proposal for change within California's Three Strikes law.

I. THE JUVENILE JUSTICE SYSTEM

The law has always drawn a line between the adult and juvenile offender.[5] Accountability for committing a crime required two elements: (1) vicious will (intent) and (2) an unlawful act.[6] To have intent, the offender must understand the difference between right and wrong; this understanding separated the juvenile from the adult offender.[7]

Traditionally, the law considered juveniles under the age of seven, also known as "infants," incapable of committing crimes.[8] Juveniles between the age of seven and fourteen were presumed incapable of committing crimes unless they demonstrated intent. If found guilty, juveniles over seven would face the full extent of the law and would be punished and confined in the same jails as adults.[9]

A. The Development of the Juvenile Justice System

Treatment of juveniles changed in the 1800s in the United States when special juvenile facilities in New York City and Chicago were created. These facilities sought to reform juvenile offenders through rehabilitation and separation from the

3. *See Nguyen*, 146 Cal. App. 4th 1332; *Nguyen*, 152 Cal. App. 4th 1205; *Nguyen*, 209 P.3d 946.

4. Apprendi v. New Jersey, 530 U.S. 466 (2000).

5. The History of Juvenile Justice, ABA Division for Public Health, *available at* http://www.americanbar.org/content/dam/aba/migrated/publiced/features/DYJpart1.authcheckdam.pdf

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

adult offenders.[10] Cook County, Illinois created the first juvenile court in 1899, and shared the same values as the juvenile facilities in New York City and Chicago.[11] The concept revolved around *parens patriae* ("parent of the country"), which authorized the state to act as the guardian for juveniles with legal disabilities.[12] The court had limited procedural rules and considered the juvenile cases to be civil (noncriminal) actions that could be resolved by guiding the juvenile away from a life of crime and towards being a responsible member of society.[13] "Instead of punishment, '[t]he primary motive of the juvenile court was to provide rehabilitation and protective supervisor for youth.'"[14]

"In the 1960s, the Supreme Court made a series of decisions that formalized the juvenile courts and introduced more due process protections."[15] United States Supreme Court Justice Fortas, writing for the majority in review of the juvenile case of *Kent v. United States*,[16] speculated that "there may be grounds for concern that the child receives the worst of both worlds [in juvenile court]: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children."[17] A year after *Kent*, the

10. The History of Juvenile Justice, ABA Division for Public Health, *available at* http://www.americanbar.org/content/dam/aba/migrated/publiced/features/DYJpart1.authcheckdam.pdf

11. *Id.*

12. *Id.*

13. *Id.*

14. Juvenile Justice History, Center on Juvenile and Criminal Justice, *available at* http://www.cjcj.org/education1/juvenile-justice-history.html.

15. *Id.*

16. Kent v. United States, 383 U.S. 541 (1966) (The juvenile, at the age of 16, was apprehended for rape and robbery while on probation for another offense. Apprehended juveniles were under the jurisdiction of the District of Columbia juvenile court unless, after a "full investigation" the court should use its discretion to waive jurisdiction and remit the juvenile to trial in the United States District Court in the District of Columbia. The juvenile court here, without a hearing or statement of reasons, entered a waiver order pursuant to D.C. Code Ann. § 11-1553 (1965). The juvenile was indicted in the district court, and a motion to dismiss the indictment due to an invalid waiver was denied. The juvenile was convicted in adult court. On appeal the juvenile jurisdiction waiver was found valid and affirmed the juvenile's criminal convictions. SCOTUS concluded that as a condition to a valid waiver, a juvenile is entitled to a hearing, including access to social records and those presumably considered by the court and to a statement of reasons for the juvenile courts decision. SCOTUS reversed the order affirming the convictions and remanded the case for the waiver issue.)

17. The History of Juvenile Justice, ABA Division for Public Health, *availa-*

United States Supreme Court in *In re Gault*[18]—an opinion again by Justice Fortas—found that delinquent juveniles should be afforded key elements of due process to ensure fairness in court proceedings: notice of the charges, a right to legal counsel, a right against self-incrimination, and a right to confront and cross-examine witnesses.[19] However, Justice Stewart in his dissent warned that by guaranteeing juveniles the same due process rights as adults, the juvenile court dangerously resembled adult proceedings.[20] Justice Stewart argued that juvenile proceedings corrected a condition and adult proceedings convicted and punished, thus by guaranteeing both offenders the same due process rights the court subjected juveniles to the possibility of harsher punishments for their crimes.[21]

Three years later, the United States Supreme Court in *In re Winship*,[22] afforded juveniles another procedural safeguard by requiring the prosecution to prove charges brought against a juvenile beyond a reasonable doubt.[23] Chief Justice Burger

---

ble at http://www.americanbar.org/content/dam/aba/migrated/publiced/features/DYJpart1.authcheckdam.pdf; *see* Kent v. United States, 383 U.S. 541, 556 (1966).

18. In re Gault, 87 S. Ct. 1428 (1967) (The juvenile, at the age of 15, was taken into custody for lewd phone calls while still on probation. The juvenile was committed as a juvenile delinquent to the State Industrial School until the age of 21. The juvenile's parents challenged the Supreme Court of Arizona's judgment denying the dismissal of their writ of habeas corpus alleging that due process rights were denied to juveniles charged as delinquents. The lower court affirmed the dismissal. The appellate court reversed finding that the juvenile and his parents did not receive due process. The delinquency petition was not served on the juvenile or his parents, they were not notified of their right to counsel, and the juvenile was denied his rights of confrontation and cross-examination of his accuser. The appellate court also found that the juvenile's right against self-incrimination was denied when his confession was obtained outside the presence of his parents, without counsel and without advisement of his right to remain silent. SCOTUS affirmed and reversed the lower courts decision).

19. The History of Juvenile Justice, ABA Division for Public Health, *available at* http://www.americanbar.org/content/dam/aba/migrated/publiced/features/DYJpart1.authcheckdam.pdf (citing In re Gault, 87 S. Ct. 1428 (1967)).

20. *Id.* at 7; *see* In re Gault, 87 S. Ct. 1428, 1470 (J. Stewart Dissenting)).

21. *Id.*

22. In re Winship, 397 U.S. 358 (1970) (The juvenile was charged with committing acts that would have been classified as larceny had he been an adult. The juvenile was found delinquent, a determination that was made based on a preponderance of the evidence. SCOTUS reviewed the case and determined that the Constitutional safeguard of proof beyond a reasonable doubt was required in juvenile adjudications and that such requirement would not compromise the subsequent benefits of the juvenile process.)

23. The History of Juvenile Justice, ABA for Public Health, *available at*

asserted in his dissent, to which Justice Stewart joined, "to transform juvenile courts into criminal courts, which is what we are well on the way to accomplishing . . ." abandons the original idea of juvenile courts as flexible and less formal institutions unique to the juvenile's needs.[24] This trend in transforming the juvenile court into a criminal proceeding slowed when the United States Supreme Court in *McKeiver v. Pennsylvania* denied a juvenile the right to a jury trial.[25] In its decision, the Court refused to fully equate the juvenile court system to an adult criminal proceeding.[26] Three Justices dissented from the majority's opinion in *McKeiver*, arguing that a juvenile should be afforded every procedural safeguard an adult offender receives when said juvenile is tried for offenses and ordered to confinement—including the right to a jury trial.[27]

Since *McKeiver*, the procedural safeguards in place for juveniles has remained the same, despite the continuous change in the purpose of the system. The current United States juvenile justice system is under a potentially crippling siege that retracts from the goal of rehabilitation. Harsher sentencing regimes in place for juveniles, such as California's Three Strikes law,[28] point to a trend where juveniles are treated punitively rather than through rehabilitation. Analyzing the Three Strikes law highlights the manner in which our system equates a juvenile adjudication as a punitive adult conviction.

II. CALIFORNIA'S THREE STRIKES LAW

California's Three Strikes law passed in 1994.[29] The concept of three strikes "ensure[s] longer prison sentences and

---

http://www.americanbar.org/content/dam/aba/migrated/publiced/features/DYJpart1.authcheckdam.pdf (citing In re Winship, 397 U.S. 358 (1970)).

24. *Id*. at 8.

25. McKeiver v. Pennsylvania, 403 U.S. 528 (1971) (SCOTUS reviewed several cases where juveniles were adjudicated delinquent and their request for a jury trial was denied. SCOTUS affirmed the judgments because the right to a jury trial is not guaranteed in juvenile adjudication proceedings under the Due Process Clause of the Fourteenth Amendment of the United States Constitution).

26. The History of Juvenile Justice, ABA for Public Health, 8, *available at* http://www.americanbar.org/content/dam/aba/migrated/publiced/features/DYJpart1.authcheckdam.pdf (citing McKeiver v. Pennsylvania 403 U.S. 528 (1971)).

27. *Id.*

28. CAL. PENAL CODE § 667 (Deering, 2013).

29. Amanda K. Packel, *Juvenile Justice and the Punishment of Recidivists*

greater punishment for those who commit a felony and have been previously *convicted* of serious[30] and/or violent[31] felonies."[32] Under California's Three Strikes law, qualifying various prior convictions result in an automatic sentence increase: the existence of one qualifying prior conviction "requires the court to double the sentence for the current offense, regardless of the existence of mitigating factors."[33]

Before California passed its Three Strikes law, prior juvenile adjudications could not be used to increase a sentence.[34] Although Proposition 8[35] passed before California's Three Strikes law and mandated that any adult or juvenile felony conviction be used to enhance future criminal proceedings, the California Courts of Appeal excluded juvenile adjudications from such use.[36] However, passage of California's Three Strikes law by voters and the legislature changed that practice significantly. California Penal Code section 667(d)(3) specifically provides that a prior juvenile adjudication constitutes a prior felony conviction:[37]

> **(d)** . . . **(3)** A prior juvenile adjudication shall constitute a prior serious and/or violent felony conviction for purposes of sentence enhancement if: **(A)** The juvenile was 16 years of age or older at the time he or she committed the prior

---

under California's Three Strikes Law, 90 CALIF. L. REV. 1157, 1168 (2002).

30. CAL. PENAL CODE § 1192.7(c) (Deering, 2013).

31. *Id. at* § 667.5(c).

32. Packel, *supra* note 29, at 1168 (quoting CAL. PENAL CODE § 667(b) (Deering, 2013)).

33. Lisa Forquer, Comment, *California's Three Strikes Law-Should a Juvenile Adjudication be a Ball or a Strike?*, 32 SAN DIEGO L. REV. 1297, 1326 (1995)

34. Packel, *supra* note 29, at 1168; *See also* Forquer, *supra* note 33, at 1310-15 (the judge could consider juvenile adjudications as an aggravating factor in considering a defendant's sentence, but the juvenile adjudication could not be used to increase the sentence past the statutory maximum).

35. Cal. Const. art. I, 28(f). This clause of the Victims' Bill of Rights provides: "Any prior felony conviction of any person in any criminal proceedings, whether adult or juvenile, shall subsequently be used without limitation for purposes of impeachment or enhancement of sentence in any criminal proceeding."

36. Forquer, *supra* note 33, at 1311 (noting that "[a]lthough courts could not use past juvenile adjudications to enhance criminal sentences, they could use past criminal convictions of juveniles for sentence enhancements," i.e. the courts could use convictions of a juvenile who was tried in adult criminal proceedings). Adjudications are findings in juvenile proceedings, convictions are findings in adult proceedings; KURT KUMLI & GARY C. SEISER, CALIFORNIA JUVENILE COURTS PRACTICE AND PROCEDURE (2012).

37. CAL. PENAL CODE § 667(d)(3) (Deering, 2013); *See* Packel, *supra* note 29, at 1168; *See also* Forquer, *supra* note 33, at 1310-15.

> offense. **(B)** The prior offense is listed in subdivision (b) of Section 707 of the Welfare and Institutions Code or described in paragraph (1) or (2) as a serious and/or violent felony.[38] **(C)** The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law. **(D)** The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.[39]

If a prior "juvenile adjudication satisfies the requirements under Three Strikes, the court must count the adjudication as a prior strike."[40] Thus the use of a prior juvenile adjudication to

38. CAL. WELFARE & INSTITUTION CODE § 707(b) (The offenses included in Welfare and Institution Code section 707 are: (1) murder, (2) arson as provided in California Penal Code section 451(a)(b), (3) robbery, (4) rape with force, violence, or threat of great bodily harm, (5) sodomy by force, violence, duress, menace, or threat of great bodily harm, (6) a lewd or lascivious act as provided by California Penal Code section 288(b), (7) oral copulation by force, violence, duress, menace, or threat of great bodily harm, (8) an offense specified in California Penal Code section 289(a), (9) kidnapping for ransom, (10) kidnapping for purposes of robbery, (11) kidnapping with bodily harm, (12) attempted murder, (13) assault with a firearm or destructive device, (14) assault by any means of force likely to produce great bodily injury, (15) discharge of a firearm into an inhabited or occupied building, (16) an offense prescribed in California Penal Code section 1203.09, (17) an offense prescribed in California Penal Code sections 12022.5 or 12022.53, (18) a felony offense in which the minor personally used a weapon listed in California Penal Code section 16590(a), (19) a felony offense described in California Penal Code section 136.1 or 137, (20) manufacturing, compounding or selling one-half ounce or more of a salt or solution of a controlled substance specified in California Health and Safety Code section 1055(e), (21) a violent felony as defined in California Penal Code section 667.5(c), which also would constitute a felony violation of California Penal Code section 186.22(b), relating to a criminal street gang sentencing enhancements, (22) escape by the use of force or violence, from a county juvenile hall, home, ranch, camp, or forestry camp in violation of California Penal Code section 871(b) if great bodily injury is intentionally inflicted on an employee of the juvenile facility during the commission of the escape, (23) torture as described in California Penal Code section 206 and 206.1, (24) aggravated mayhem as described in California Penal Code section 205, (25) carjacking, as described in California Penal Code section 215, while armed with a dangerous or deadly weapon, (26) kidnapping for purposes of sexual assault, as punishable under California Penal Code section 209(b), (27) kidnapping as punishable in California Penal Code section 209.5, (28) the offense described in California Penal Code section 26100(c), (29) the offense described in California Penal Code section 18745, and (30) voluntary manslaughter as described in California Penal Code section 192(a)).

39. CAL. PENAL CODE § 667(d)(3) (Deering, 2013).

40. Forquer, *supra* note 33, at 1322.

automatically increase the base sentence for an offender drastically changed California law and practices.

III. CHANGES TO JUVENILE ADJUDICATIONS UNDER THE THREE STRIKES LAW

The Three Strikes law and Proposition 184[41] significantly altered the traditional practices of rehabilitation and confidentiality in the juvenile justice system.[42] Before the enactment of California's Three Strikes law, a prior juvenile adjudication was a sentencing factor.[43] Adjudications would only be viewed at the discretion of the judge to determine a sentence for the defendant within the statutory maximum.[44] In contrast, under Three Strikes, a prior juvenile adjudication automatically doubles the defendant's base sentence for the current offense—this is because Three Strikes equates certain juvenile adjudications to serious or violent felony adult convictions.[45] Qualifying juvenile adjudications for a felony offense listed in Welfare and Institutions Code section 707(b) or any serious or violent felony under sections 667.5 and 1192.7(c) of the California Penal Code, committed by a minor sixteen years of age or older, are now used as convictions for sentencing enhancement purposes.[46] There is some overlap between the Penal Code Code's

41. Proposition 184 is the initiative version of the California Three Strikes law. This 1994 proposition was nearly identical to California's Three Strikes law and gave voters the opportunity to essentially vote on the Three Strikes law. The 72% voter approval of the proposition sent a message of strong support for the mandatory sentence enhancement structure; *see* Packel, *supra* note 29, at 1167.

42. CALIFORNIA JUVENILE COURTS PRACTICE AND PROCEDURE, *supra* note 36, at 3-172. *See generally* CAL. PENAL CODE § 1170.12(b)(3) (Deering, 2013) ("A prior juvenile adjudication shall constitute a prior serious and/or violent felony conviction for the purposes of sentence enhancement if: (A) The juvenile was sixteen years or age or older at the time he or she committed the prior offense; and (B) the prior offense is: (i) listed in subdivision (b) of section 707 of the Welfare and Institutions Code, or (ii) listed in this subdivision as a serious and/or violent felony, and (C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law and (D) the juvenile was adjudged a ward of the court within the meaning of section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of section 707 of the Welfare and Institutions Code.").

43. Forquer, *supra* note 33, at 1326–27.

44. *See id.*

45. *Id.* at 1321, 1326.

46. CALIFORNIA JUVENILE COURTS PRACTICE AND PROCEDURE, *supra* note 36, at 3-172; *See* CAL. PENAL CODE § 667 (Deering, 2013); *See generally* CAL. WELFARE & INSTITUTION CODE § 707(b) (The offenses included in Welfare and Institution Code section 707 are: (1) murder, (2) arson as provided in California

treatment of serious or violent adult felonies and the Welfare and Institutions Code treatment of juvenile adjudications.[47] However, offenses such as manufacturing a controlled substance and escape from juvenile hall are not categorized as serious or violent under the Penal Code, but still count as a strike offense against a juvenile offender.[48]

A. Dispute Between the Circuits

Juvenile adjudications used as strike offenses create disputes between state and federal courts.[49] The California Court of Appeal in *People v. Fowler*[50] first rejected the claim that, due to a lack of jury trial, juvenile adjudications cannot be used as

---

Penal Code section 451(a)(b), (3) robbery, (4) rape with force, violence, or threat of great bodily harm, (5) sodomy by force, violence, duress, menace, or threat of great bodily harm, (6) a lewd or lascivious act as provided by California Penal Code section 288(b), (7) oral copulation by force, violence, duress, menace, or threat of great bodily harm, (8) an offense specified in California Penal Code section 289(a), (9) kidnapping for ransom, (10) kidnapping for purposes of robbery, (11) kidnapping with bodily harm, (12) attempted murder, (13) assault with a firearm or destructive device, (14) assault by any means of force likely to produce great bodily injury, (15) discharge of a firearm into an inhabited or occupied building, (16) an offense prescribed in California Penal Code section 1203.09, (17) an offense prescribed in California Penal Code sections 12022.5 or 12022.53, (18) a felony offense in which the minor personally used a weapon listed in California Penal Code section 16590(a), (19) a felony offense described in California Penal Code section 136.1 or 137, (20) manufacturing, compounding or selling one-half ounce or more of a salt or solution of a controlled substance specified in California Health and Safety Code section 1055(e), (21) a violent felony as defined in California Penal Code section 667.5(c), which also would constitute a felony violation of California Penal Code section 186.22(b), relating to a criminal street gang sentencing enhancements, (22) escape by the use of force or violence, from a county juvenile hall, home, ranch, camp, or forestry camp in violation of California Penal Code section 871(b) if great bodily injury is intentionally inflicted on an employee of the juvenile facility during the commission of the escape, (23) torture as described in California Penal Code section 206 and 206.1, (24) aggravated mayhem as described in California Penal Code section 205, (25) carjacking, as described in California Penal Code section 215, while armed with a dangerous or deadly weapon, (26) kidnapping for purposes of sexual assault, as punishable under California Penal Code section 209(b), (27) kidnapping as punishable in California Penal Code section 209.5, (28) the offense described in California Penal Code section 26100(c), (29) the offense described in California Penal Code section 18745, and (30) voluntary manslaughter as described in California Penal Code section 192(a)).

47. Packel, *supra* note 29, at 1169.

48. *Id*.

49. CALIFORNIA JUVENILE COURTS PRACTICE AND PROCEDURE, *supra* note 36, at 3-188.

50. People v. Fowler, 72 Cal. App. 4th 581 (1999).

strike offenses.[51] Two years later the United States Court of Appeal for the Ninth Circuit in *United States v. Tighe*[52] held contrary to that, finding that use of prior convictions without a jury finding beyond a reasonable doubt was unconstitutional.[53]

However, within the following two years, two federal cases[54] subsequently rejected the reasoning in *Tighe*, finding that the procedural safeguards in place for juvenile proceedings were more than sufficient to count the adjudication as a prior conviction.[55] California has since followed the trend of rejecting the reasoning in *Tighe* and included in its Penal Code the requirement that a jury determine only whether the defendant "has suffered" a prior conviction.[56]

The juvenile court additionally changed its procedures for sealing a juvenile record. Traditionally juveniles could petition the court to seal their records.[57] However, due to California's Three Strikes law, juvenile adjudication records for offenses under Welfare and Institutions Code section 707(b), when committed at the age of fourteen or older, can no longer be sealed, thus the juvenile's action follows him or her for life.[58]

IV. THE MODERN DAY IMPACT THROUGH *PEOPLE V. NGUYEN*

The Santa Clara County Superior Court took on the task of issuing an enhanced sentence under California's Three Strikes law based on a qualifying juvenile adjudication in *People v. Nguyen*.[59] On appeal, the defense challenged the inclusion of a juvenile adjudication as a conviction under the Three

51. CALIFORNIA JUVENILE COURTS PRACTICE AND PROCEDURE, *supra* note 36, at 3-188.

52. United States v. Tighe, 266 F.3d 1187 (9th Cir. 2001).

53. CALIFORNIA JUVENILE COURTS PRACTICE AND PROCEDURE, *supra* note 36; *Tighe*, 266 F.3d at 1193-94.

54. United States v. Smalley, 294 F.3d 130 (8th Cir. 2002); United States v. Jones, 332 F.3d 688 (3rd Cir. 2003).

55. CALIFORNIA JUVENILE COURTS PRACTICE AND PROCEDURE, *supra* note 36, at 3-189; California cases have followed suit in rejecting the reasoning in *Tighe*. *See also Smalley* at 1030-32; *Jones* at 696.

56. CALIFORNIA JUVENILE COURTS PRACTICE AND PROCEDURE, *supra* note 36, at 3-189; *See also* People v. Bowden, 102 Cal. App. 4th 387, 392-93 (2002); People v. Lee, 111 Cal. App. 4th 1310, 1316 (2003); People v. Buchanan, 143 Cal. App. 4th 139, 149 (2006); People v. Superior Court (Andrades), 113 Cal. App. 4th 817, 833-34 (2003).

57. CALIFORNIA JUVENILE COURTS PRACTICE AND PROCEDURE, *supra* note 36, at 3-182.

58. *Id.* at 3-183.

59. People v. Nguyen, 146 Cal. App. 4th 1332 (2007).

Strikes law.[60] The California Court of Appeal for the Sixth District, in an effort to find the correct constitutional application, took an in-depth look at the decisions of the United States Supreme Court leading up to and surpassing the application of the holding in question: *New Jersey v. Apprendi*.[61] Ultimately, the California Supreme Court granted review of Nguyen's sentence enhancement and ruled in favor of a juvenile adjudication counting as a qualifying "prior conviction" under the Three Strikes law.[62]

A. Nguyen's Juvenile Adjudication

In December 1999, sixteen year-old defendant Vincent Vinhtuong Nguyen fell under juvenile court jurisdiction, pursuant to Welfare and Institutions Code section 602, when he was accused of "aggravated assault with a knife and a crowbar and inflicting great bodily injury on the victim."[63] The State additionally alleged Nguyen was not "a fit and proper subject to be dealt with under the juvenile court law . . . ."[64] Nguyen remained in juvenile court and admitted to assault with a deadly weapon, a violation of Penal Code section 245, subdivision (a)(1),[65] in January 2000. He received a disposition of juvenile hall detention.[66]

---

60. *Id.*

61. *Id.*

62. People v. Nguyen, 46 Cal. 4th 1007, 1028 (2009).

63. People v. Nguyen, 146 Cal. App. 4th 1332, 1337 (2007) (quoting CAL. PENAL CODE §§ 245(a)(1) 12022.7 (Deering, 2013).

64. *Nguyen*, 146 Cal. App. 4th at 1337 (The California Supreme Court in 1997 took an in-depth look at the state's Three Strikes law specifically section 667, subdivision (d)(3)(C) of the California Penal Code relating to juvenile adjudications. In *People v. Davis*, 15 Cal. 4th 1096, 1098-1101 (1997), the defendant was charged with two felony counts in addition to the allegation that his two prior juvenile adjudications and one adult conviction counted as sentencing enhancements under the Three Strikes Law. The defendant contended that section 667, subdivision (d)(3)(C) of the California Penal Code required an express finding of fitness by the juvenile court. The court rejected the defendant's contention, ruling "that there does not have to be an express finding of fitness for a juvenile adjudication to qualify as a strike within the meaning of section 667, subdivision (d)(3)(C), it may be implied.").

65. CAL. PENAL CODE § 245(a)(1) (Deering, 2013) (stating the applicable punishment for any person who upon another person commits assault with a deadly weapon or instrument, excluding a firearm).

66. *Nguyen*, 146 Cal. App. 4th at 1337 (alternative placements were considered, however none were ever found).

B. Nguyen's Adult Proceedings: People v. Nguyen, Superior Court of Santa Clara County

In December 2004, when Vincent Nguyen, was twenty-one years old, he was charged with four felonies and two misdemeanors.[67] Nguyen received a negotiated disposition in March where he pled no contest to one misdemeanor[68] and one felony.[69]

Nguyen waived his statutory right, pursuant to California Penal Code section 1025(a)-(b), to a jury trial on whether he had "suffered" an alleged prior conviction.[70] Based on documented evidence, the court found the prior 1999 juvenile adjudication to be true.[71] Nguyen objected to the court's finding, arguing that because he had no right to a jury trial as a juvenile, use of his adjudication as a strike in the current case violated his Sixth Amendment right to a jury trial.[72] The court rejected the argument and sentenced him to sixteen months for the felony conviction, which then doubled to thirty-two months due to the prior juvenile adjudication under the Three Strikes law.[73]

C. Nguyen's Appeal: People v. Nguyen, The Court of Appeal of California, Sixth Appellate District, January 2007

The defense appealed the trial court's use of Nguyen's juvenile adjudication to increase his sentence, arguing that it violated his Sixth Amendment right to a jury trial.[74] The California Court of Appeal affirmed the trial court's finding that Nguyen's adjudication could be used to increase his sentence,

---

67. *Id.* at 1336 (explaining the felony counts as: "possession of a firearm by an ex-felon (§ 12022.1 (a)(1)), possession of ammunition by an ex-felon (§ 12316 (b)(1)), possession of a billy (§ 12020 (a)(1)), and possession of methamphetamine (Health & Safety Code § 11377(a)).") (Misdemeanor counts included: "being under the influence of a controlled substance (Health & Safety Code § 11550 (a)) and possession of drug paraphernalia (Health & Safety Code § 11364(a)").

68. *Nguyen*, 146 Cal. App. 4th at 1336; CAL. PENAL CODE § 12020(a)(1) (Deering, 2013).

69. *Nguyen*, 146 Cal. App. 4th at 1336; CAL. PENAL CODE § 12021(a)(1) (Deering, 2013).

70. People v. Nguyen, 209 P.3d 946, 950 (2009).

71. *Nguyen*, 146 Cal. App. 4th at 1336.

72. *Id.*

73. *Nguyen*, 209 P.3d at 949; CAL. PENAL CODE § 18 (Deering, 2013) CAL. PENAL CODE §§ 667(e)(1), 1170.12(c)(1) (Deering, 2013).

74. *Nguyen*, 146 Cal. App. 4th at 1336.

holding that a *contested* juvenile adjudication, under the Three Strikes law, could be used for the purpose of enhancing an adult sentence "in excess of the maximum sentence that could have been imposed on the basis of trial or a defendant's admission."[75] The court held that the use of Nguyen's adjudication, which resulted from a judicial admission, was valid under the Three Strikes law.[76]

Before beginning its analysis of the claims, the Sixth District Court of Appeal noted the traditional premise behind the creation of the juvenile system[77] and the inherent procedural rights[78] in place for juveniles. In reviewing the exclusion of the right to a jury trial, the court cited *McKeiver v. Pennsylvania*[79] and referenced three central ideas behind the U.S. Supreme Court's holding against providing a right to a jury trial in juvenile proceedings: (1) the inclusion of this right would bring with it the delay and formality of the adversary system taking away the informal proceedings and destroy the "aspect of fairness, of concern, of sympathy, and of paternal attention that the juvenile court system contemplates;"[80] (2) the Court did not want to tread in waters which had not been addressed by the States or commissioned by the President;[81] and (3) the lack of support from the legislative and executive branch demonstrated that jury trials were no more "reliable than court trials nor 'a necessary part even of every criminal process that is fair and equitable.'" [82]

The United State Supreme Court drew a clear line between the juvenile and adult system;[83] that is until the Three Strikes law passed,[84] which as the Sixth District Court of Appeal stated, "blur[ed] the line between juvenile adjudications

75. *Id.* at 1361.
76. *Nguyen*, 146 Cal. App. 4th at 1361
77. *Id.* at 1337-40 (citations omitted) (stating that the idea was that children, due to their young age, were less culpable or not culpable at all and that with the right guidance these impressionable youth were susceptible to reform).
78. *Nguyen*, 146 Cal. App. 4th at 1338 ("[N]otice, counsel, the privilege against self-incrimination, confrontation, the presumption of innocence and proof beyond a reasonable doubt, [and] double jeopardy.").
79. McKeiver v. Pennsylvania, 403 U.S. 528 (1971).
80. *Nguyen*, 146 Cal. App. 4th at 1338 (citing *McKeiver*, 403 U.S. at 550).
81. *Id.* at 1339 (citing *McKeiver*, 403 U.S. at 548).
82. *Id.* (quoting *McKeiver*, 403 U.S. at 547 (citation omitted)).
83. *Nguyen*, 146 Cal. App. 4th at 1341.
84. *Id.*

and prior criminal convictions."[85]

D. Recent United State Supreme Court Sixth Amendment Case Law

The United States Supreme Court, in an effort to reestablish a clear line, recently interpreted the right to a jury trial under the United States Constitution's Sixth Amendment.[86] In *Apprendi v. New Jersey*,[87] the Court held that any fact, except the fact of a prior conviction, used against a criminal defendant to impose a higher punishment than the statutorily set maximum must be charged in an indictment and proven to a jury beyond a reasonable doubt.[88] The trial court enhanced Apprendi's maximum sentence for firearm possession from ten to twelve years.[89] The enhancement was based on an evidentiary finding that Apprendi acted with a "racially biased purpose," a purpose that was not included in the indictment.[90] The Court—in referencing *Jones v. United States*[91]—stated that facts exposing a defendant to a sentence greater than the legal maximum are by definition elements of a different offense,[92] not "sentencing factor[s]."[93] The Sixth District Court of Appeal struggled with how best to apply *Apprendi*. Here, in an attempt to better understand *Apprendi* and its application to juvenile adjudications, the Sixth District Court of Appeal looked to pre- and post-*Apprendi* cases.[94]

---

85. *Id.*

86. U.S. CONST. amend. VI.

87. Apprendi v. New Jersey, 530 U.S. 466 (2000) (SCOTUS reversed the judgment of the state supreme court petitioner finding it unconstitutional to remove a jury from assessing the facts that would increase the range of punitive measures to which the defendant was exposed. At the trial level petitioner pled guilty to third degree offense of unlawful possession of an antipersonnel bomb and two counts of second degree possession of a firearm for an unlawful purpose. The trial court enhanced petitioners sentence, finding by a preponderance of the evidence that petitioner acted with the intention to intimidate a person or group of people due to their race. The appellate court and state supreme court affirmed the sentence).

88. *Nguyen*, 146 Cal. App. 4th at 1341.

89. *Id.* at 1345; *see Apprendi*, 530 U.S. at 471.

90. *Nguyen*, 146 Cal. App. 4th at 1343; *see Apprendi*, 530 U.S. at 471.

91. *Id.*; Jones v. United States, 526 U.S. 227 (1999).

92. *Nguyen*, 146 Cal. App. 4th at 1345 (citing *Apprendi*, 530 U.S. at 482-83).

93. *Id.* (citing *Apprendi*, 530 U.S. at 485) (explaining that the United States Supreme Court coined the term "sentencing factor" in *McMillan v. Pennsylvania*, 477 U.S. 79 (1986), which referred to a fact that could affect the sentence, was not found by a jury, and was instead imposed by a judge).

94. *Id.* at 1342-48; *See generally* Almendarez-Torres v. United States, 523

1. United States Supreme Court Decisions pre-Apprendi

Beginning with *Almendarez-Torres*[95] in 1998 (pre-*Apprendi*), the United States Supreme Court analyzed a federal statute that authorized a two-year maximum sentence for an illegal immigration offense with a sentence enhancement of up to twenty years if the defendant had suffered certain prior convictions.[96] At the district court level, after Almendarez-Torres admitted to having suffered three prior convictions, he argued that his sentence could not be enhanced because his indictment, which must set forth all elements of the crime, did not mention his prior convictions.[97] The district court disagreed with Almendarez-Torres and sentenced him to eighty-five months. The appellate court upheld his sentence and the United States Supreme Court granted certiorari.[98] The United States Supreme Court rejected Almendarez-Torres's claim that, according to the Constitution, Congress is required to treat recidivism as an element of the offense.[99] As a result of the United States Supreme Court's decision, recidivism continued to be treated as a sentencing factor and not an element of the crime.[100]

In the next term, still pre-*Apprendi*, the United States Supreme Court in *Jones*[101] analyzed "the federal carjacking statute which provides for an enhanced sentence if serious bodily injury occurs during the commission of the offense."[102] The jury convicted Jones of such offense and he was sentenced to twenty-five years—ten more years than the maximum statutory sentence.[103] Although the indictment did not allege serious

U.S. 224 (1998); United States v. Jones, 332 F.3d 688 (3rd Cir. 2003); Apprendi, 530 U.S. 466; Ring v. Arizona, 536 U.S. 584 (2002); Blakely v. Washington, 542 U.S. 296 (2004); United States v. Booker, 543 U.S. 220 (2005).

95. *Almendarez-Torres*, 523 U.S. 224.

96. *Nguyen*, 146 Cal. App. 4th at 1342 (citing *Almendarez-Torres*, 523 U.S. at 229).

97. *Id.* (citing *Almendarez-Torres*, 523 U.S. at 227).

98. *Id.*

99. *Nguyen*, 146 Cal. App. 4th at 1342 (citing *Almendarez-Torres*, 523 U.S. at 239).

100. *Id.* at 1342-43 (citing *Almendarez-Torres*, 523 U.S. at 239-46); *See also* McMillian v. Pennsylvania, 477 U.S. 79 (1986) (holding a mandatory minimum sentence to be Constitutional).

101. Jones v. United States, 526 U.S. 227 (1999).

102. *Nguyen*, 146 Cal. App. 4th at 1343; Jones v. United States, 526 U.S. 227 (1999).

103. *Id.*

bodily injury, the trial court, at an evidentiary hearing outside the presence of a jury, made a finding of serious bodily injury.[104] The United States Supreme Court granted certiorari.[105] The Court concluded that the allegation of "great bodily injury" was not a "sentencing factor" and thus was subject to a finding, by a preponderance of the evidence, by the judicial fact finder.[106]

Thus, the Court rejected the claim that *Almendarez-Torres* allowed any sentencing enhancement fact, which increased the maximum statutory punishment, to be determined outside the presence of a jury.[107] The Court reasoned that *Almendarez-Torres* rested in the tradition of recidivism and that the use of recidivism to increase the maximum sentence did not need to be charged in the indictment.[108] Sentence enhancements based on recidivism, as suggested in *Almendarez-Torres*, may be distinguished constitutionally from alternative facts that may extend the range of sentencing.[109] Unlike other sentence enhancements, a prior conviction must have been established through constitutional due process satisfying the guarantees of a right to a jury trial, reasonable doubt, and fair notice.[110] *Almendarez-Torres* thus became the exception and not the rule.[111]

2. United States Supreme Court Decisions post-Apprendi

The Sixth District Court of Appeal attempted to clarify the United States Supreme Court's use of sentencing factors by analyzing two post-*Apprendi* cases: *Blakely v. Washington*[112] and *United States v. Booker*.[113] The Court in *Blakely* found a statutory scheme that allowed judicial discretion in imposing a sentence above the statutory legal maximum, if there was a

104. *Nguyen*, 146 Cal. App. 4th at 1343 (citing *Jones*, 526 U.S. 227).
105. *Id.* at 1344 (citing *Jones*, 526 U.S. at 239).
106. *Id.* at 1343 (citing *Jones*, 526 U.S. at 239).
107. *Id.* at 1344 (citing *Jones*, 526 U.S. at 248-49).
108. *Id.* (citing *Jones*, 526 U.S. at 249).
109. *Id.* (citing *Jones*, 526 U.S. at 249).
110. *Nguyen*, 146 Cal. App. 4th at 1344 (citing *Jones*, 526 U.S. at 249).
111. *Id.* at 1346 (citing *Apprendi*, 530 U.S. at 489-90) (stating that if Almendarez-Torres had challenged the accuracy of the "fact" of prior conviction in his case then the due process and Sixth Amendment concerns would not have been mitigated).
112. Blakely v. Washington, 542 U.S. 296 (2004).
113. United States v. Booker, 543 U.S. 220 (2005).

finding of aggravating factors, to be unconstitutional.[114] Thus, the United States Supreme Court undoubtedly reaffirmed *Apprendi*,[115] explaining that the statutory maximum is the maximum sentence that a judge can impose without any additional findings.[116]

In *Booker*, the trial court, in a post-trial sentencing proceeding, enhanced the defendant's sentence after finding—by a preponderance of the evidence—that the defendant possessed a greater quantity of drugs than found by the jury.[117] In reviewing *Booker*, the United States Supreme Court, again reaffirmed *Apprendi* by holding that "[a]ny fact (other than a prior conviction) which is necessary to support a sentence exceeding the maximum number authorized by the facts established by a plea agreement or a jury verdict must be admitted by the defendant or proved to a jury beyond a reasonable doubt."[118] As a result, the United States Supreme Court upheld the distinction between sentencing elements and sentencing factors.[119]

The Sixth District Court of Appeal noted, however, that the United States Supreme Court has not given an answer as to whether juvenile adjudications count as a prior conviction after *Apprendi*.[120] Lower courts remain divided on the issue.[121] The Ninth Circuit Court of Appeals,[122] in a divided panel, held that juvenile adjudications for the purposes of *Apprendi* did not constitute a prior conviction.[123] The majority, using the language in *Jones* and *Apprendi*, viewed this exception narrowly, limiting prior convictions to those utilizing procedural safeguards, such as a jury trial and a finding beyond a reasonable doubt.[124] The majority found that juvenile adjudications made without a jury trial could not qualify as prior convictions.[125]

The dissent viewed the majority's interpretation of *Jones*

114. *Nguyen*, 146 Cal. App. 4th at 1346 (citing *Blakely*, 542 U.S. at 300).
115. *Apprend*i, 530 U.S. 466.
116. *Nguyen*, 146 Cal. App. 4th at 1346-47 (citing *Blakely*, 542 U.S. at 303-06).
117. *Booker*, 543 U.S. 220.
118. *Nguyen*, 146 Cal. App. 4th at 1347 (quoting *Booker*, 543 U.S. at 244).
119. *Nguyen*, 146 Cal. App. 4th at 1348.
120. *See id.* at 1347-48.
121. *Id.* at 1348.
122. *Tighe*, 266 F.3d 1187.
123. *Nguyen*, 146 Cal. App. 4th at 1348 (citing *Tighe*, 266 F.3d at 1194).
124. *Nguyen*, 146 Cal. App. 4th at 1348.
125. *Nguyen*, 146 Cal. App. 4th at 1348 (citing *Tighe*, 266 F.3d at 1194).

as a logical "quantum leap."[126] In Justice Brunetti's view, *Jones* stood for the proposition that Congress's constitutional power consisted of the power to treat prior convictions as sentencing factors, subject to a lesser burden of proof; for adults this includes a jury trial, and for juveniles it does not.[127] Thus, allowing a juvenile adjudication to count as a prior conviction for sentencing purposes remains constitutional since the juvenile received every "process constitutionally due at the juvenile stage."[128] A number of state court opinions have adopted Justice Brunetti's views.[129] However, an increasing number of state courts have followed the majority's view that juvenile adjudications do not qualify as prior convictions for the purpose of *Apprendi*, barring their use for enhancing adult sentences.[130]

E. The Sixth District Court of Appeal's Decision

The Sixth District Court of Appeal relied on three considerations in determining why the use of juvenile adjudications, for the purpose of *Apprendi*, are not barred from use as "strikes" under the Three Strikes law: "(1) recidivism is different; (2) juries add nothing to the reliability of a trial's fact finding function; and (3) juries are not indispensable to due process in the context of sentencing above the statutory maximum."[131] In *Nguyen*, the Sixth District Court of Appeal took each one of these considerations in turn, focusing particularly on the rationale from *People v. Fowler*,[132] in which the defendant's conviction was enhanced due to a finding of having suffered two prior felonies, one a juvenile adjudication, under California's

126. *Id.* (citing *Tighe*, 266 F.3d at 1200 (Brunetti, J. dissenting)).

127. *Nguyen*, 146 Cal. App. 4th at 1348.

128. *Id.*; The dissents view was adopted by the Eighth Circuit (*United States v. Smalley* 249 F.3d 1030 (8th Cir. 2002)), *Smalley* was followed by the Third Circuit (*United States v. Jones*, 332 F.3d 668 (3rd Cir. 2003)), and by the Eleventh Circuit (*United States v. Burge*, 407 F.3d 1183 (11th Cir. 2005)).

129. *Nguyen*, 146 Cal. App. 4th at 1349; *See generally* State v. Hitt, 42 P.3d 732, 739 (2002), *vacated*, 842 N.E.2d 320; People v. Bowden, 102 Cal. App. 4th 387 (2002); People v. Smith, 110 Cal. App. 4th 1072 (2003); People v. Lee, 111 Cal. App. 4th 1310 (2003) (Rushing, P.J., dissenting); People v. Super. Ct. (Andrades), 113 Cal. App. 4th 817 (2003); *See also* People v. Fowler, 72 Cal. App. 4th 581 (1999).

130. *Nguyen*, 146 Cal. App. 4th at 1349; *See generally* State v. Brown, 879 So. 2d 1276, 1290 (La. 2004); Pinkston v. State, 836 N.E.2d 453 (Ind. App. 2005).

131. *Nguyen*, 146 Cal. App. 4th at 1349.

132. People v. Fowler, 72 Cal. App. 4th 581 (1999).

Three Strikes law. [133]

1. Recidivism

The United States Supreme Court in *Apprendi* did not overrule *Almendarez-Torres*, but only limited its holding with a narrow exception.[134] Thus, the lower courts were left to answer the question of how to interpret the term "prior convictions" that reflect recidivism under California's Three Strikes law, such as adjudications, but are not considered convictions by definition.[135] The Fifth District Court of Appeal in *Fowler* addressed this question by evaluating the purpose of California's Three Strikes law, *i.e.*, to "provide greater punishment for recidivists."[136] There, the court determined that juvenile adjudications fell within the tradition of recidivism vested in the Three Strikes law.[137] The court reasoned that a prior juvenile adjudication, although not a conviction, demonstrated that, by re-offending, the defendant failed to draw the proper lesson from the first violation, and thus his recidivism warranted a harsher punishment in an adult proceeding.[138]

The Sixth District Court of Appeal, however, found several problems with *Fowler's* reliance on recidivism.[139] First, the court in *Fowler*, although pre-*Apprendi*, did not appreciate the distinction between sentencing elements relating to the offense that judges may consider in imposing sentences within the legal statutory limit and sentencing factors that mandate sentences over the legal statutory maximum authorized by a jury verdict.[140]

133. Although *Fowler*, 72 Cal. App. 4th at 581, was decided before *Apprendi v. New Jersey*, 530 U.S. 466 (2000), the rationales have been uniformly credited as strongly influencing post-*Apprendi* cases. In *Fowler*, the defendant's conviction for oral copulation while confined in a detention facility was enhanced under the Three Strikes law due to a finding that he had suffered two prior qualifying felonies, one being from a juvenile adjudication. Fowler appealed asserting that the use of his juvenile adjudication under the Three Strikes law was unconstitutional, the Court of Appeal rejected his assertion.

134. *Nguyen*, 146 Cal. App. 4th at 1351.

135. *Nguyen*, 146 Cal. App. 4th at 1351.

136. *Id.* (quoting *Fowler*, 72 Cal. App. 4th at 584).

137. *Id.* (quoting *Fowler*, 72 Cal. App. 4th at 585).

138. *Id.* (citing Fowler, 72 Cal. App. 4th at 587).

139. *Id.*

140. *Id.* at 1352; *see* Apprendi v. New Jersey, 530 U.S. 466, 481 (2000).

Second, the reasoning in *Fowler* that approved the incorrect use of juvenile adjudications focused on *People v. Lucky*,[141] a case where the facts of the juvenile's conduct were tried to a jury.[142] Third, the court relied on language offered in *Almendarez-Torres* that referenced recidivism as only applicable to the question of punishment.[143] Although possibly true, the court stated that it did not mean that recidivism was immune from the scrutiny of the Constitution's Sixth Amendment.[144]

Lastly, this court objected to the *Fowler* court's assumption that a juvenile adjudication proved recidivism.[145] As implicitly stated by the court in *Lucky* and recognized by *Fowler*, "[i]t is not the adjudication, but the conduct itself, which is relevant."[146]

2. Reliability

In reaching its holding, the Fifth District Court of Appeal in *Fowler* focused on the language in *McKeiver v. Pennsylvania*[147] and *Duncan v. Louisiana*,[148] which specifically recognized by dictum that a fair and equitable criminal process is not founded in the jury and that imposing a jury trial within the juvenile system would not greatly strengthen the fact finding function.[149] The court reasoned that since juveniles can constitutionally be adjudicated, "there is no constitutional impediment" in the use of juvenile adjudications to enhance a sentence at later adult proceedings.[150]

The Sixth District Court of Appeal disagreed with the rationale in *Fowler*.[151] First, this court criticized the *Fowler* court's need to disparage the importance and accuracy of the jury.[152] Second, unlike the *McKeiver* court's conclusion that a

141. People v. Lucky, 45 Cal. 3d 259 (1988).
142. *Nguyen*, 146 Cal. App. 4th at 1352 (citing *Lucky*, 45 Cal. 3d at 296).
143. *Id.* at 1353 (quoting People v. Fowler, 72 Cal. App. 4th 581, 586 (1999)).
144. *Id.*; *See generally* U.S. CONST. amend. VI.
145. *Nguyen*, 146 Cal. App. 4th at 1353.
146. *Id.* at 1353 (quoting Lucky, 45 Cal. 3d at 295).
147. McKeiver v. Pennsylvania, 403 U.S. 528, 547 (1971).
148. Duncan v. Louisiana, 391 U.S. 145, 149-50 (1968).
149. *Nguyen*, 146 Cal. App. 4th at 1353 (citing People v. Fowler, 72 Cal. App. 4th 581, 586 (1999)); *see generally Duncan*, 391 U.S. at 149-50; *McKeiver*, 403 U.S. at 547.
150. *Nguyen*, 146 Cal. App. 4th at 1353 (quoting *Fowler*, 72 Cal. App. 4th at 586).
151. *Nguyen*, 146 Cal. App. 4th at 1354-55.
152. *Id.* at 1354.

jury trial is not a necessity in producing accurate fact finding, subsequent legal developments found that the fact finding accuracy of the jury is unacceptably impaired when it consists of less than six people.[153] In the court's view, it is not that judicial fact finding is unreliable in affording due process to juveniles, but that in the absence of a jury waiver due process is only afforded in non-petty criminal cases when decided by a jury of six or more people.[154] As stated by the Louisiana Supreme Court in *State v. Brown*:[155]

> [t]o equate this adjudication with a conviction as a predicate offense for purposes of the Habitual Offender Law would subvert the civil trappings of the juvenile adjudication to an extent to make it fundamentally unfair and thus, violate due process. . . . . to continue holding a trial by jury is not Constitutionally required, we cannot allow these adjudications . . . to be treated as predicate offense the same as felony convictions. . . . It seems contradictory and fundamentally unfair to provide youths with fewer procedural safeguards in the name of rehabilitation and then to use these adjudications obtained for treatment purposes to punish them more severely as adults.[156]

Using a sentencing enhancement during a criminal case on an adult offender triggers the Sixth Amendment right to a jury trial.[157] When California's Three Strikes law uses a juvenile adjudication to enhance an adult offender's sentence, it does so in an adult criminal proceeding where the procedural rules of adult criminal cases govern.[158] "One of those rules is that a criminal sentence must reflect the judgment of a jury of at least six members, even if it is a prior conviction, unless that jury is waived."[159] By allowing the inclusion of a juvenile adjudication as evidence of a prior conviction, the law is not relying on the judgment of a six-panel jury, but on the fact finding judgment that is constitutionally unacceptable in a criminal

153. *Id.* at 1355 (citing Ballew v. Georgia, 435 U.S. 223, 232-33 (1978)) ("When individual and group decision-making were compared, it was seen that groups performed better because prejudices of individuals were frequently counterbalanced, and objectively resulted.").

154. *Id.* at 1356.

155. State v. Brown, 879 So. 2d 1276, 1289 (La. 2004).

156. *Nguyen*, 146 Cal. App. 4th at 1357 (quoting *Brown*, 879 So. 2d at 1289).

157. *Id.*

158. *Id.*

159. *Id.*

case where there is no jury waiver.[160]

3. Indispensability

The right to a jury trial is a fundamental scheme to American justice.[161] A jury trial allows for fact finding accuracy and prevents government oppression in providing safeguards from legal corruption and essentially checking judicial power.[162] In both *Jones* and *Apprendi*, the Sixth District Court of Appeal recognized the "vast difference between accepting the validity of a prior judgment of conviction entered in a proceeding in which the defendant had the right to a jury trial . . . and allowing the judge to find the required fact under a lesser standard of proof."[163]

The court recognized this difference and was thus persuaded to see that a judgment, even reflecting recidivism, must require the procedural safeguard of a jury trial.[164] The Sixth District Court of Appeal undoubtedly agreed that juveniles received the proper safeguards to assure reliability in juvenile adjudications, but determined that use of those adjudications as a sentencing enhancement in criminal proceedings was constitutionally impermissible for *Apprendi* purposes.[165] Additionally, this court disagreed with the argument that Penal Code section 1025[166] solved the constitutional problem.[167] An overwhelming difference exists between proving to a jury—on the one hand—the contested facts of actual criminal conduct underlying the adjudication and—on the other hand—that the defendant once suffered a juvenile adjudication.[168] Therefore, this court found that the only way to constitutionally solve this problem was in holding that juvenile adjudications do not come within the meaning of prior convictions, under *Apprendi*, due to the lack of a jury trial within juvenile proceedings.[169]

160. *Id.*
161. *Id.* at 1357 (citing Ballew v. Georgia 435 U.S. 223, 229 (1978)).
162. *Nguyen*, 146 Cal. App. 4th at 1357-58.
163. *Id.* at 1359 (quoting Apprendi, 530 U.S. at 496).
164. *Id.*
165. *Id.*
166. The relevant part of the statute provides a statutory right to the defendant to try the question of whether he actually had suffered the prior conviction in front of a jury. *See* CAL. PENAL CODE § 1025 (Deering, 2013).
167. *Nguyen*, 146 Cal. App. 4th at 1360.
168. *Id.*
169. *Id.*

"The caveat is that a juvenile adjudication can be used, without offending the Constitution, if it is based on the defendant's admission."[170] A judicial admission creates as much reliability as a jury trial to support a finding of recidivism and the use for sentence enhancement.[171] Here, the Sixth District Court of Appeal held that since the defendant, Nguyen, admitted to the commission that resulted in his juvenile adjudication, the use of his juvenile adjudication was not prohibited for sentence enhancement use; thus, the trial court appropriately applied Nguyen's adjudication under California's Three Strikes law.[172]

F. People v. Nguyen: The Court of Appeal of California, Sixth Appellate District on Reconsideration

In the Sixth District Court of Appeal's original opinion the court concluded that an admitted juvenile adjudication was a reliable finding that the underlying crime had been committed.[173] In drawing from aspects of *Apprendi*[174] and *Blakely*,[175] the court originally found that a judicial admission supported a "finding of recidivism, [and] that admission is sufficiently reliable to support an enhanced sentence based on the court's finding of the admitted fact."[176] However, on reconsideration this court found that by focusing on the reliability of an admission evidenced in *Apprendi* and *Blakely*, the court originally lost perspective on the additional attributes that did not relate to recidivism but were still protected by the Sixth Amendment right to a jury trial.[177]

Both the defendant in *Blakely*[178] and the defendant in *Almendarez-Torres*[179] had the right to a jury trial at some point

170. *Id.* at 1360.
171. *Id.* at 1360-61.
172. *Id.* at 1361.
173. *Id.* at 1237.
174. Apprendi v. New Jersey, 530 U.S. 466 (2000).
175. Blakely v. Washington, 542 U.S. 296 (2004).
176. *Nguyen*, 152 Cal. App. 4th at 1237-38.
177. *Id*.
178. *Blakely*, 542 U.S. at 298; *Nguyen*, 152 Cal. App. 4th at 1238 ("Blakely's negotiated plea to second degree kidnapping involving domestic violence and firearm use was made with the full knowledge that he could have insisted on a jury trial on the underlying facts.").
179. *Nguyen*, 152 Cal. App. 4th at 1238 ("Alemandarez-Torres made his admission that he had previously been convicted of aggravated felonies, he had already been afforded the chance to challenge the facts underlying those convictions

in their proceedings, which fulfilled the constitutional role of the jury trial regardless of whether they took advantage of that right.[180] As stated by the court in *Blakely*, even when the defendant gives up the right to a jury trial that right still plays its constitutional role "because the very reason the Framers put a jury-trial guarantee in the Constitution is that they were unwilling to trust the *government* to mark out the role of the jury."[181] Thus, the defendant—not the government—makes the decision as to whether the "costs [of a jury trial] outweigh its benefits."[182]

Here, the Sixth District Court of Appeal reasoned that Nguyen's juvenile status prevented him from reaping the benefits of a jury determination for the underlying adjudication.[183] The jury's role in verifying his adjudication for his sentence enhancement resulted in only "making a determination that the defendant at some point did something wrong, a mere preliminary to a judicial inquisition into the facts of the crime the State *actually* seeks to punish."[184] Therefore, the sentencing enhancement did not fully reflect a knowledgeable and intelligent waiver of the jury or a jury determination.[185]

In its first finding, the court did not sufficiently take into account *Blakely*, which focused on the possible damage that a lack of a jury trial can cause and the intent behind the division of judge and jury.[186] Thus, after reconsideration, the Sixth District Court of Appeal held that enhancing a sentence beyond the statutory maximum by use of a prior juvenile adjudication under California's Three Strikes law violated the rights given under *Apprendi*,[187] regardless of whether the adjudication resulted from a contested hearing or an admission.[188]

---

at a jury trial.").

180. *Nguyen*, 152 Cal. App. 4th at 1238.

181. *Id.* (quoting *Blakely*, 542 U.S. at 308 (italics added)).

182. *Id.* (quoting *Blakely*, 542 U.S. at 310).

183. *Id.*

184. *Id.* (quoting *Blakely* 542 U.S. at 307 (footnote omitted)).

185. *Id.*

186. *Nguyen*, 152 Cal. App. 4th at 1239; *Blakely*, 542 U.S. at 313 (reasoning that it turned on whether the efficiency or fairness of criminal justice was impaired by the jury trial right. An argument that fairness and efficiency would better be left in the hands of professionals could be made, but the Framers of the Constitution instead limited the state power by the division of judge and jury).

187. *Nguyen*, 152 Cal. App. 4th at 1239.

188. This court notes that its holding in no way entitled juveniles the right to a jury trial, it does not affect juveniles whose cases are transferred to adult courts,

G. California Binding Decision: People v. Nguyen, The Supreme Court of California[189]

The California Supreme Court granted review of *People v. Nguyen* and in turn reversed the California Court of Appeal,[190] holding that under *Apprendi*, the absence of the right to a jury trial under juvenile law did not preclude the use of the adjudication to enhance the maximum statutory sentence for an ensuing adult felony offense by the same defendant.[191]

In rejecting the Court of Appeal's claims, the California Supreme Court reasoned that the rule in *Apprendi* only applied to "any 'fact' that allows enhancement of an adult defendant's maximum sentence for *the current offense* [and that fact] must, unless the defendant waives his jury-trial right, be determined by a jury *in the current case*."[192] The statutorily relevant *fact* at issue in this case was whether Nguyen's record included a qualifying adjudication under California's Three Strikes law allowing for the enhancement of his current sentence.[193] As long as Nguyen had the right for a jury to decide the "fact" which allowed for an enhanced sentence in his adult case, he fell under *Apprendi*; California statutory law gave him such right.[194] In California, for purposes of enhancing the sentence for current charges, the defendant may dispute an allegation that he suffered a prior conviction by submitting to a jury the question of whether he "had suffered" the prior conviction.[195] In the current proceeding Nguyen expressly waived his

---

and it has no application outside those 16 or 17 years of age who were accused of less serious crimes, remained in juvenile court and received an adjudication, whether by trial or admission, whose adjudication is then used to justify sentences in excess of the statutory maximum that could be imposed in adult court for the underlying crime. *See Nguyen*, 152 Cal. App. 4th at 1239.

189. People v. Nguyen, 209 P.3d 946 (2009).

190. *Id. at 959.*

191. *Id.* at 959.

192. *Id.* at 950-51.

193. *Id.*

194. *Id.* at 950-51, n.8. The issue of whether the defendant suffered a prior conviction must be tried to the court without a jury. *See* CAL. PENAL CODE § 1025(c) (Deering, 2013). The trier of fact determines whether a prior conviction qualifies under the Three Strikes law. People v. Kelii, 21 Cal. 4th 452, 455-59 (1999). The judge must determine whether prior convictions were from charges brought and tried separately. *See* People v. Willey, 9 Cal. 4th 580, 583,92 (1995).

195. *Nguyen*, 209 P.3d at 951; CAL. PENAL CODE § 1025(a) (Deering, 2013); CAL. PENAL CODE § 1025(b) (Deering, 2013); CAL. PENAL CODE § 1158 (Deering, 2013).

right to a jury trial on the question of whether he "had suffered" the prior conviction and submitted the issue to the court.[196]

The Sixth District Court of Appeal did not persuade the California Supreme Court by the contention that *Apprendi* contemplated juvenile adjudications as being barred from use by implication, citing the language used justifying the only exception for the fact of a prior conviction.[197] The California Supreme Court, however, did not read *Apprendi* as broadly as the Sixth District Court of Appeal has above.[198] The procedural rights and protections in place display that the Constitution and the United States Supreme Court saw fit to protect the minor while still retaining the informal, rehabilitating, and *parens patriae* purpose of the juvenile justice system.[199]

"Prior juvenile adjudications substantially satisfy all of the reasons set forth in *Almendarez-Torres*, *Jones*, and *Apprendi*" as to why prior convictions may be used to enhance the maximum sentence in an ensuing adult case without the need for a jury finding for the prior conviction.[200] The California Supreme Court reasoned that sentencing concerns the defendant's recidivism, i.e. their status as a repeat offender.[201] That recidivism, the previous conviction, was established by criminal misconduct, and was found with all of the procedural safeguards constitutionally required for *that* proceeding.[202] The use of an adjudication made with such protections in place did not offend the constitutional rights of the adult defendant in the subsequent adult proceeding.[203] Thus, this court found it senseless to conclude that under *Apprendi*, a juvenile adjudication deemed reliable when rendered, would be deemed con-

196. *Nguyen*, 209 P.3d at 950-51.

197. *Id.* at 951 (citing Apprendi at 490). "The 'prior conviction' exception arises from a pre-*Apprendi* case, *Almendarez-Torres*, [523 U.S. 224]." *Id.* .

198. *Nguyen*, 209 P.3d, at 953.

199. *Id.* at 953-54 (stating as noted by Justice White in *McKeiver v. Pennsylvania*, 403 U.S. 528 at 552 (1971) (concurring White, J.) ("[S]uch differences [between the adult and juvenile system] ameliorate the need, in the juvenile system, for the jury's role as a community buffer against government oppression, judicial bias, and politicized justice.").

200. *Nguyen*, 209 P.3d at 954-55; *see generally Almendarez-Torres* 523 U.S. 224; *see generally Jones* 526 U.S. 227; *see generally Apprendi* 530 U.S. at 466

201. *Id.* at 955.

202. *Id.* at 955.

203. *Id.* at 955.

stitutionally inadequate later for the establishment of recidivism.[204]

Moreover, the United States Supreme Court in *Jones*, *Apprendi*, or *Almendarez-Torres* never stated or implied that a prior adjudication that serves as a sentencing factor on the basis of recidivism needed to come from a proceeding that included, particularly, the right to a jury trial.[205] The Court in *Jones* and *Apprendi* never directly addressed the circumstances under which a prior adjudication may be used to enhance a subsequent adult sentence, making their comments purely dictum.[206] The Court's decision that a juvenile adjudication was sufficiently reliable and constitutionally fair without the right to a jury trial has not been disturbed.[207] These adjudications remain constitutionally founded and, as suggested in the decisions above, may be reliably used to enhance succeeding sentences without further jury involvement.[208] A juvenile adjudication is "highly probative on the issue of recidivism;" thus, here, the United States Supreme Court declined to hold that a juvenile adjudication, for the sole reason of a lack of a jury trial, could not be made available to enhance sentencing in an adult proceeding.[209]

Lastly, the California Supreme Court disagreed with the argument that a juvenile adjudication represented itself as fair and equitable for the juvenile purposes, but not for use in a subsequent adult proceeding without the right to a jury trial.[210] A prior juvenile adjudication, like an adult conviction, rationalizes an increased punishment on the basis of recidivism.[211] Sentencing enhancements based on recidivism are justified under the premise that the current criminal conduct presented with past criminal conduct is evidence that the defendant lacks reform.[212]

The California Supreme Court found support for its decision in *Nichols v. United States*,[213] which stated that "[t]he

204. *Nguyen*, 209 P.3d at 954-55.
205. *Nguyen*, 209 P.3d at 956.
206. *Id.* at 956.
207. *Id.* at 956-57.
208. *Id.*
209. *Id.*
210. *Nguyen*, 209 P.3d at 957.
211. *Id.*
212. *Id.*
213. *Nguyen*, 209 P.3d at 958 (citing Nichols v. United States, 511 U.S. 738,

rule's animating principle is the preservation of the jury's historic role as a bulwark between the State and the accused at the trial for an alleged offense."[214] The court found it appropriate to look at the "twin considerations [of] historical practice and state sovereignty in deciding if juvenile adjudications extended to areas not addressed by the high Court."[215]

Past decisions[216] established that no historical practice existed within the traditional domain of juries that pointed to juvenile adjudications or adjudicated recidivism as a sentencing factor.[217] California has, however, expressed within its Three Strikes law specific serious prior juvenile adjudications, which should serve as "prior felony convictions" for the purpose of sentencing enhancements.[218] Therefore, the weight within the twin considerations is given to the State.[219] Accordingly, the California Supreme Court found the Sixth District Court of Appeal unpersuasive and held that, for purposes of *Apprendi*, use of a juvenile adjudication under California Three Strikes law is valid.[220]

H. California Supreme Court Justice Kennard Dissent

Justice Kennard, characterized the central issue differently,[221] stating that the central issue was the decision by the United States Supreme Court in *Apprendi v. New Jersey*[222] and whether use of a juvenile adjudication to increase a sentence violates the constitutional right to a jury trial.[223]

According to Justice Kennard, the development of *Apprendi* came from the Court's concern of "a new trend in the

747-48 (1994)) (noting that recidivism is a basis for sentencing enhancements and goes only to the factor of punishment not to the factors of the current offense "and that the criminal conduct evidenced by the prior conviction was subject to the standard of proof beyond a reasonable doubt.").

214. *Nguyen*, 209 P.3d at 959 (citing Oregon v. Ice, 555 U.S. 160, 167-68 (2009)).

215. *Nguyen*, 209 P.3d at 959 (quoting *Ice*, 555 U.S. at 168).

216. *See generally Almendarez-Torres*, 523 U.S. 224; Jones v. United States, 526 U.S. 227 (1999); *Apprendi*, 530 U.S. 466.

217. *Nguyen*, 209 P.3d at 959.

218. *Id.*

219. *Id.*

220. *Id.*

221. *Nguyen*, 209 P.3d at 959-963 (Kennard J. dissenting)

222. *Nguyen*, 209 P.3d at 960 (Kennard J., dissenting); *Apprendi*, 530 U.S. at 466 (noting that the Court that requires a jury trial on any fact increasing the statutory maximum for a charged offense).

223. *Nguyen*, 209 P.3d at 960 (Kennard, J. dissenting).

legislative regulation of sentencing."[224] These laws effectively diminished the power of juries while increasing that of the trial courts.[225] As stated by the Court in *Booker*:

> As enhancements became greater, the jury's finding of the underlying crime became less significant. And the enhancements became very serious indeed . . . [¶] . . . The new sentencing practice forced the Court to address the question how the right of jury trial could be preserved, in a meaningful way guaranteeing that the jury would still stand between the individual and the power of the government under the new sentencing regime.[226]

California's Three Strikes law exemplifies this harsher sentencing regime; it requires a sentence be doubled when one qualifying underlying felony exists, like a prior adjudication here, and a minimum sentence of twenty-five years to life when two qualifying prior juvenile adjudications exist.[227] As pointed out before in the California Supreme Court opinion, juveniles do not have the right to a jury trial; thus, in basing an increased punishment on facts not determined by a jury, California's Three Strikes law, in Kennard's view, clashes with the holding in *Apprendi*.[228]

The reasoning behind the California Supreme Court majority's decision failed to persuade Justice Kennard.[229] First, according to the majority, the holding in *Apprendi* applied only to the adjudication itself and not to the felonious conduct.[230] However, *Apprendi* stated, "other than the fact of a prior conviction, *any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury*, and proved beyond a reasonable doubt."[231] The italicized language, as construed by Justice Kennard, requires a jury determination on both the existence of the prior adjudication and

---

224. *Id.* at 960 (Kennard, J. dissenting) (quoting Booker, 543 U.S. at 236).
225. *Nguyen*, 209 P.3d at 961 (Kennard, J. dissenting).
226. *Id.* (Kennard, J. dissenting) (quoting *Booker*, 543 U.S. at 236-37).
227. *Id.* (Kennard, J. dissenting) (citing CAL. PENAL CODE § 667(d)(3)).
228. *Id.* (Kennard, J. dissenting) (citing Apprendi, 530 U.S. at 490) ("[U]nder the Sixth Amendment of the federal Constitution a criminal defendant has a right to have a jury determine 'any fact' that increases the penalty for a charged offense.").
229. *Nguyen*, 209 P.3d at 961 (Kennard, J. dissenting).
230. *Id.* at 961 (Kennard, J. dissenting).
231. *Nguyen*, 209 P.3d at 961 (Kennard, J. dissenting) (quoting *Apprendi*, 530 U.S. at 490).

the conduct that led to the adjudication.[232] The essential element of *Apprendi* is that determinations not made by a jury cannot be used to increase the sentence beyond the statutory maximum.[233] Juvenile adjudications are entirely contrary: a juvenile adjudication is simply a legal document stating a judge, not a jury, determined the minor committed criminal conduct.[234] The majority's reasoning for not finding juvenile adjudications contrary to *Apprendi* revolved around the legislative control to enact or amend sentence-increasing laws where a judge determines if the aggravated circumstance occurred and the jury, after the fact, decides if the judge actually made that specific determination.[235] Justice Kennard argued that this view did not accurately reflect the United States Supreme Court's intent in *Apprendi*.[236]

Additionally, the California Supreme Court majority's finding is inconsistent with its 2008 decision in *People v. Towne*.[237] In *Towne*, the court held that, under *Apprendi,* a prior determination of a parole or probation violation in a non-jury revocation proceeding could not be used to increase a defendant's sentence.[238] The California Supreme Court implied in *Towne* that the right to a jury trial not only extends to the adjudication itself but also to the conduct of the underlying adjudication.[239] As a result, the majority's interpretation of *Apprendi* cannot be reconciled with its later decision in *Towne*.[240]

The second main point Justice Kennard made was that the United States Supreme Court had yet to decide whether the "fact of a prior conviction" exception in *Apprendi* applies to juvenile adjudications.[241] The *Apprendi* Court stated, "that the exception to the jury trial right applies only to the 'fact of a prior *conviction*.'"[242] It is common language and knowledge in

232. *Id.* (Kennard, J. dissenting).
233. *Nguyen*, 209 P.3d at 962 (Kennard, J. dissenting) (citing *Apprendi*, 530 U.S. at 466).
234. *Id.* (Kennard, J. dissenting).
235. *Id.*
236. *Id.*
237. *Nguyen*, 209 P.3d at 962 (Kennard, J. dissenting).
238. *Nguyen*, 209 P.3d at 962 (Kennard, J. dissenting) (citing *Towne*, 44 Cal. 4th 63, 82-83).
239. *Id.* (Kennard, J. dissenting).
240. *Id.*
241. *Id.* at 963 (Kennard, J. dissenting).
242. Nguyen, 209 P.3d at 963 (Kennard, J. dissenting) (quoting *Apprendi*, 530 U.S. at 490).

the field of law that convictions do not arise out of juvenile adjudications, but rather are obtained through adult proceedings where a jury trial right is afforded.[243] Thus, Justice Kennard found it reasonable to infer that the *Apprendi* Court did not intend this exception to be applied when no jury trial right existed.[244] Rather, when the United States Supreme Court created this "exception to the general right to a trial by jury on any fact supporting a sentence increase beyond the statutory maximum, it did so only for proceedings in which the accused did have that right."[245]

Here, the presented problem is not the reliability of juvenile adjudications, but the fact that one person—the judge—determined the juvenile adjudication, which conflicts with the constitutional guarantee of a jury trial.[246] Therefore, Justice Kennard concluded "that the Sixth Amendment's right to a jury trial does not permit a trial court to impose additional punishment that is based on prior juvenile criminal conduct for which there was no right to a jury trial."[247]

IV. LEGAL AND SOCIAL JUSTICE IMPLICATIONS

The United States Supreme Court has yet to explicitly address the issue of whether a lack of jury trial in juvenile adjudications prevents their use as a prior conviction under habitual offender laws and particularly California's Three Strikes law. Thus, the states must individually interpret the most relevant holding, *Apprendi v. New Jersey*.[248] As a result, the issue remains as to whether juvenile adjudications under *Apprendi* count as prior convictions for use under a recidivism law. For purposes of California law, they do. The California Supreme Court held in a binding decision that, under *Apprendi*, the absence of the right to a jury trial under juvenile law does not preclude the use of the adjudication to enhance the maximum statutory sentence for an ensuing adult felony offense by the same defendant under California's Three Strikes law.[249]

243. *Id.* (Kennard, J. dissenting).
244. *Nguyen*, 209 P.3d at 963 (Kennard, J. dissenting).
245. *Id.*
246. *Id.*
247. *Id.*
248. Apprendi v. New Jersey, 530 U.S. at 554 (2000).
249. *Nguyen*, 209 P.3d at 959.

A. Did the California Supreme Court Get It Right?

The California Supreme Court's most compelling argument came from the section on recidivism; that a juvenile's prior conviction demonstrates a lack of reform.[250] Sentencing enhancements based on recidivism are justified under the premise that the current criminal conduct reflects an increased seriousness due to the previous finding of criminal conduct showcasing a lack of reform.[251] The defendant is back under the jurisdiction of the courts and has, if convicted, re-offended. However, the California Supreme Court neglected to see the difference in culpability that exists when the defendant is an adult and when his or her prior conviction comes from a juvenile adjudication.

The Sixth District Court of Appeal correctly and persuasively quoted the Louisiana Supreme Court[252] in addressing the culpability issue and the hypocritical stance that the juvenile justice system demonstrated by allowing adjudications to count as convictions.[253] The court in *State v. Brown*[254] stated that equating the adjudication of a juvenile with the conviction of an adult is fundamentally unfair and contradictory to the establishment and purpose of the juvenile justice system.[255] What is the point of having two systems of judgment when the courts are going to equate the judgments of both as carrying the same weight?

Justice Kennard addressed this issue in her dissent of the California Supreme Courts decision in *Nguyen* when she analyzed *Apprendi*.[256] She stated that it was common language and knowledge in the field of law that convictions do not arise out of juvenile adjudications, but rather are obtained through adult court proceedings where a jury trial right is afforded.[257] The Court in *Apprendi* stated, "that the exception to the jury trial right applies only to the 'fact of a prior *conviction*.'"[258] Thus, Justice Kennard found it reasonable to infer that the

250. *Id.* at 957.
251. *Id.*
252. State v. Brown, 879 So. 2d 1276, 1289 (La. 2004).
253. *Nguyen*, 146 Cal. App. 4th at 1357 (quoting *Brown*, 879 So. 2d at 1289).
254. *Brown*, 879 So. 2d at 1289.
255. *Nguyen*, 146 Cal. App. 4th at 1357 (quoting *Brown*, 879 So. 2d at 1289).
256. *Nguyen*, 209 P.3d at 963 (Kennard, J. dissenting).
257. *Id.*
258. *Id.* (Kennard, J. dissenting) (quoting *Apprendi*, 530 U.S. at 490).

Court in *Apprendi* did not intend this exception to be applied when there was no right to a jury trial.[259] The United States Supreme Court explicitly stated the rule in *Apprendi* knowing that adjudications are not considered equivalent to convictions. For the California Supreme Court to then equate the two together is an impermissible use of the Court's intentions.

The Sixth District Court of Appeal stated that recidivism was not outside the scrutiny of the Constitution.[260] Purely labeling a defendant a recidivist does not mean that that defendant should not be afforded the same procedural safeguards. When the prior conviction is a juvenile adjudication the procedural safeguards in place are different. The adult defendant is no longer receiving those same procedural safeguards for both the current conviction and the adjudication. As the Sixth District Court of Appeal stated in *Nguyen*, when California's Three Strikes law uses a juvenile adjudication to enhance an adult offender's sentence it is doing so in an adult criminal proceeding and is bound by the rules governing adult criminal cases.[261] A judge makes the determination in a juvenile adjudication, the jury makes the determination in an adult conviction; a jury consists of at least six people, a judge is one person.[262] The presented problem is not the reliability of juvenile adjudications, but the fact that one individual, the judge, determined the juvenile adjudication, which contradicts the constitutional guarantee of a jury trial in adult court.[263]

The California Supreme Court in *Nguyen* argued that the language of *Apprendi* only applied a jury determination on any fact that allows an enhancement beyond the statutory maximum in the current offense.[264] Simply put, as long as the defendant in the adult proceeding has the opportunity to have his or her past conviction verified (*i.e.,* submitted) to a jury, then *Apprendi* is satisfied.[265] However, that interpretation is not founded if *Apprendi* only applies to recidivist laws. Recidivism, as the Sixth District Court of Appeal stated, comes from the conduct leading to the adjudication and not the adjudication

259. *Id.* (Kennard, J. dissenting).
260. *Nguyen*, 146 Cal. App. 4th at 1353; *Apprendi*, 530 U.S. at 484.
261. *Nguyen*, 146 Cal. App. 4th at 1356.
262. *Nguyen,* 209 P.3d at 961-63
263. *Nguyen*, 209 P.3d at 963 (Kennard, J. dissenting).
264. *Id.* at 950.
265. *Id.*

itself.[266]

Justice Kennard's dissent in the California Supreme Court decision in *Nguyen* addressed this issue best by understanding that the holding in *Apprendi* applied to recidivism, and thus a jury must determine both the fact of the conviction and the conduct that led to such conviction.[267] Justice Kennard quoted *Apprendi*, which stated, "other than the fact of a prior conviction, *any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury*, and proved beyond a reasonable doubt."[268] The italicized language, as construed by Justice Kennard, requires a jury finding on both the existence of the prior adjudication and the conduct that led to the adjudication.[269] The adjudication is viewed as "any fact," meaning the conduct proving recidivism and the adjudication need to be submitted to a jury trial.[270] Thus, the intent of the United States Supreme Court in *Apprendi*, based on the language, according to Justice Kennard, is to apply the right to a jury trial to both the conduct and the adjudication.[271]

The California Supreme Court did not give this argument the consideration it deserved. The court simply based its decision on the United States Supreme Court finding in *McKeiver v. Pennsylvania*,[272] and held that juveniles were given all of the procedural safeguards necessary to protect the minor while maintaining the informal nature of the juvenile justice system.[273] The court felt it senseless to conclude that under *Apprendi*, a juvenile adjudication that is deemed reliable under the Constitution when rendered, would be deemed constitutionally inadequate to establish recidivism for sentence enhancement.[274] Yet *McKeiver* was decided in 1971,[275] when adjudications were simply just that: adjudications. The United States Supreme Court never considered that adjudications would eventually be used as convictions. The amount of time

266. *Nguyen*, 146 Cal. App. 4th at 1353; *See Apprendi*, 530 U.S. at 484.
267. *Nguyen*, 209 P.3d at 951 (Kennard, J. dissenting).
268. *Nguyen*, 209 P.3d at 963 (Kennard, J. dissenting) (quoting *Apprendi*, 530 U.S. at 490).
269. *Id.* (Kennard, J. dissenting).
270. *Id.* at 962 (Kennard J. dissenting).
271. *Id.* at 962 (Kennard J. dissenting).
272. *McKeiver*, 403 U.S. at 550-51
273. *Nguyen*, 209 P.3d at 953-55.
274. *Nguyen*, 209 P.3d at 955.
275. *McKeiver*, 403 U.S. 528.

that has passed and the changes to society, to the judicial system, and to people are insurmountable. The United States Supreme Court has not reconsidered the potential for judicial bias since 1971. It is radically wrong to continue to so strongly rely on this holding without considering that the face of the juvenile system has changed.

The Sixth District Court of Appeal cited to subsequent legal holdings, which found the fact finding accuracy of the jury unacceptably impaired when it consisted of less than six people.[276] Jurors counterbalance one another's internal biases when coming to a conclusion.[277] Stated differently, no balance exists when one individual makes the decision. However, this potential danger does not diminish the reliability of a juvenile adjudication within the system since the punishment is less severe and the record of the adjudication can be sealed. It is when those two concepts are ousted that the danger becomes life changing. In terms of California's Three Strikes law, a qualifying prior conviction doubles a defendant's sentence for the current offense.[278] With two qualifying prior convictions the defendant's sentence increases to twenty-five years to life.[279] The stakes for the defendant drastically change when he or she moves from the juvenile system to the adult system, and to allow the adjudication to be deemed as reliable as a jury determination is fundamentally unfair.

The California Supreme Court in *Nguyen* pointed to the use of California Penal Code section 1025(C) as overcoming the jury trial problem with juvenile adjudications.[280] In California, for purposes of enhancing the sentence for a current offense, the defendant may dispute an allegation that he suffered a prior conviction by submitting the question of whether he "had suffered" the prior conviction, unless a jury is waived, to a

---

276. *Nguyen*, 146 Cal. App. 4th at 1355 (citing Ballew v. Georgia, 435 U.S. 223, 232-33 (1978)) ("When individual and group decisionmaking were compared, it was seen that groups performed better because prejudices of individuals were frequently counterbalanced, and objectively resulted.").

277. *Id.*

278. *Nguyen*, 209 P.3d at 961 (Kennard, J. dissenting) (citing CAL. PENAL CODE § 667(d)(3)).

279. *Id.*

280. *Nguyen*, 209 P.3d at 950-51; CAL.; PENAL CODE § 1025(c); *see generally* People v. Kelii, 21 Cal. 4th 452, 455-59 (1999); *see generally* People v. Willey, 9 Cal. 4th 580, 583-592.

jury.[281] However, California Penal Code section 1025(C) does not truly guarantee a jury determination on that issue. As illustrated in the California Supreme Court's opinion, what the jury determined was severely limited.[282] The court determines the issue of who suffered the prior conviction; the court determines the issue of whether that prior conviction qualifies under the statute; and lastly the court determines the issue of whether the prior convictions were brought and tried separately.[283] As a result, the judge determines if the record of the prior conviction is that of the defendant's, if a qualifying prior conviction exists, and if it was brought under the proper procedures.[284] What does the jury decide? The California statute that the California Supreme Court relied on in determining that *Apprendi* was met does not even fall under *Apprendi*. Unfortunately, Nguyen never made this argument, instead only suggested it in passing.[285]

Apart from the above argument, the Sixth District Court of Appeal persuasively rejected the notion that California Penal Code section 1025(C) accurately reflected the necessity of a jury trial under *Apprendi*.[286] The court stated that an overwhelming disparity existed between proving to a jury contested facts of actual criminal conduct underlying the adjudication and proving to a jury that the defendant once suffered a juvenile adjudication.[287] Proving that a defendant once suffered an adjudication is done merely by showing a record; a juvenile adjudication is simply a legal document stating a judge, not a jury, determined the minor committed criminal conduct.[288] Any reasonable juror would find reliability in a court document stating that the defendant in the case suffered a prior adjudication. No question would exist as to the validity of the claim. Comparing that decision-making process with that of a juror who is posed with the question of whether the necessary conduct actually existed is ridiculous. The jury looks at facts,

281. *Nguyen*, 209 P.3d at 950-51, 209 P.3d at 1015; CAL.; PENAL CODE § 1025(a); CAL. PENAL CODE § 1025(b); CAL. PENAL CODE §1158.

282. *Supra* note 186.

283. *Nguyen,* 209 P.3d at 962-63.

284. *Id.*

285. *Nguyen*, 209 P.3d at 951, n. 8; Interview with Seth Flagsberg, Defense Attorney, California Court of Appeals (Oct. 31, 2013).

286. *Nguyen*, 146 Cal. App. 4th at 1360.

287. *Id.*

288. *Nguyen*, 209 P.3d at 962 (Kennard, J. dissenting).

hears both sides, and comes to an intelligent and informed decision. Conversely, in determining if the defendant "had suffered"[289] the jury only sees one component, the record. The two decisions do not equate.

Ultimately, in answering which court got it right, the most persuasive arguments are from the Sixth District Court of Appeal [290]and Justice Kennard's dissent in the California Supreme Court opinion.[291] The arguments by the Sixth District Court of Appeal and Justice Kennard reflect an in-depth understanding of the purpose of the juvenile justice system and the biases present in turning an adjudication into a conviction. Not only is it fundamentally unfair to hypocritically apply the adjudication as a conviction, but it is legally impermissible. The danger of continuing to allow these adjudications to be treated as convictions is severe. Nguyen's sentence was doubled by his adjudication,[292] if he had two adjudications then his sixteen-month sentence could have turned into a life sentence. Too much is at stake under California's Three Strikes law to allow for a finding of truth in juvenile court to be applied as a finding of guilt in the adult court.

B. Social Justice Implications

An encounter with the juvenile justice system as an adolescent poses the potential risk for a lifelong relationship with the criminal system. The purpose of the juvenile justice system is to limit or break that potential relationship through rehabilitating the minor.[293] However, when punitive repercussions replace rehabilitative measures the juvenile system fails.

Without the confidential safeguard of the right to a jury trial and the criminal justice system's lack of faith in the minor, the transformation of the juvenile justice system's due process rights since *In re Gault* leave juveniles with few options. The juvenile court wanted to treat the juvenile procedurally as an adult, while retaining its rehabilitative image. Yet, by

289. *Nguyen*, P.3d at 951.
290. *Nguyen*, 146 Cal. App. 4th at 1350-60
291. *Nguyen*, 209 P.3d at 962-63 (Kennard, J. dissenting)
292. *Id.* at 960
293. The History of Juvenile Justice, ABA Division for Public Health, 5, *available at* phttp://www.americanbar.org/content/dam/aba/migrated/publiced/features/DYJpart1.authcheckdam.pdf

guaranteeing the juvenile offender almost all of the same procedural safeguards afforded to adults, the juvenile system essentially discarded its view of correcting or rehabilitating a condition and picked up the adult system's view of conviction and punishment.

In addition to the constitutional inequality present in the use of adjudications as convictions under California's Three Strikes law, juveniles should not be treated as adults because just that; juveniles are not adults. Juveniles are not cognitively developed enough to understand the consequences of their actions.[294] Traditionally, accepting responsibility for what one has done served as a demonstration of a key measure in finding guilt or intent in one's actions.

The age of an offender does not only reflect the youth of the juvenile, but also the development of necessary decision—making impulses in the brain.[295] The frontal lobe, associated with impulse control and judgment making, does not fully develop until a person's mid-twenties,[296] yet the law considers juveniles to be adults at eighteen, and are treated as adults under California's Three Strikes law at the age of sixteen.[297] Traditionally, "kids could be kids"; even if juveniles committed a crime during a lapse of judgment the juvenile system was there to guide them back to the right path. However, our juvenile system no longer allows for the same mistakes to be made; juveniles who are just being kids will forever be haunted by those mistakes.

As evidenced in *Nguyen*, the definition of reform has changed.[298] At age sixteen Nguyen spent his entire detention confined to juvenile hall.[299] Proper rehabilitation techniques provide juveniles with the skills and knowledge needed to better themselves and their community.[300] The purposes behind the juvenile system are that the state would better serve as a

294. Richard Knox, *The Teen Brain*, *available at* http://www.npr.org/templates/story/story.php?storyId=124119468

295. *Id.*

296. *Id.*

297. CAL. PENAL CODE § 667(d)(3).

298. *See generally Nguyen*, 146 Cal. App. 4th 1332 (2007); *see generally Nguyen*, 152 Cal. App. 4th 1205 (2007); *see generally Nguyen*, P.3d 205 906 (2009).

299. People v. Nguyen, 146 Cal. App. 4th 1332, 1337 (2007).

300. The History of Juvenile Justice, ABA Division for Public Health, 5, *available at* phttp://www.americanbar.org/content/dam/aba/migrated/publiced/features/DYJpart1.authcheckdam.pdf.

guardian for the juvenile and help them to become a productive member of society.[301] However, by changing the criminal system's view of the minor through laws such as California's Three Strikes law, the criminal system no longer only focuses on making juveniles better members of society, but instead on punishing them twice for childish mistakes.

Habitual offender laws—such as California's Three Strikes law—illuminate the view of our juvenile system and adult criminal system as revolving doors. The juvenile past cannot be escaped or put behind a person even after they have fully complied with the consequences of their actions. California's Three Strikes law does not take into consideration the youth of the juvenile, it only sees the adjudication as a conviction and the adult as a repeat criminal. The California Three Strikes law as applied to juveniles highlights the disparities in our juvenile system and worsens the American public's understanding of a fair and equitable legal system.

V. REMOVING SUBSECTION (D)(3) FROM CALIFORNIA'S THREE STRIKES LAW

California's Three Strikes law should be revised to exclude California Penal Code section 667(d)(3), which allows prior juvenile adjudications to count as prior convictions for strike offenses.[302] The inclusion section 667(d)(3) highlights the legislature's mistake of equating juvenile adjudications with adult violent or serious felonies and should be stricken from the statute. As indicated above, the use of a prior adjudication that was determined without the procedural safeguards of the jury trial lacks the appropriate reliability ensured in convictions of serious or violent felonies under the adult system. By eliminating this subdivision from the statute, the state of California could return to the clear line traditionally drawn between the juvenile justice system and the adult court.

The impact of eliminating the use of juvenile adjudications as prior convictions under California's Three Strikes law would be two-fold. First, from a legal perspective, courts would no longer question the constitutional safeguards in place for juveniles. Second, the question of whether a right to a jury trial exists in the juvenile system would be eliminated, and Courts

301. *Id.*
302. CAL. PENAL CODE § 667(d)(3).

courts could soundly rely on *McKeiver v. Pennsylvania*. The constitutional safeguards in place would be as applicable as the United States Supreme Court saw them in 1971. Juveniles would still be held accountable for their actions due to the court's ability to apply sentencing elements within the statutory maximum range. This elimination would revert our juvenile system back to the original purpose.

If section 667(d)(3)[303] was nonexistent at the time of Nguyen's juvenile adjudication then his adjudication would only have been used as a sentencing factor and not an automatic enhancement in his subsequent adult proceeding.[304] Thus, Nguyen's adjudication and past behavior would be considered by the court, but not allow the court to double his base sentence. This change acknowledges the fact that juveniles are not guaranteed the safeguard of a right to a jury trial. It is important to note that this does not mean that juveniles cannot obtain convictions applicable to California's Three Strikes law.

A juvenile may still obtain a conviction under the jurisdiction of the adult criminal system as defined by California's Three Strikes law.[305] The juvenile court has the discretion to remove a juvenile from its jurisdiction and place that juvenile in adult court.[306] Once the juvenile is tried as an adult, the court's finding, if the finding is guilty, is considered a conviction.[307] Thus, the proposal here is not that juveniles who commit certain crimes should not be held accountable under California's Three Strikes law, rather that adjudications and convictions should not be equated as such. When a juvenile receives a conviction from adult proceedings they receive the right to a jury trial and thus have the procedural safeguards needed to create reliability within the conviction. When a juvenile is adjudicated, they do not have the reliability of the jury and lack the appropriate due process safeguards needed for an automatic sentence enhancement.

303. *Id.*

304. Forquer, *supra* note 33, at 1310-15 (the judge could consider juvenile adjudications as an aggravating factor in considering a defendant's sentence, but the juvenile adjudication could not be used to increase the sentence past the statutory maximum).

305. CAL. PENAL CODE § 667.

306. Forquer, *supra* note 33, at 1312.

307. *Id.*

CONCLUSION

Vincent Nguyen's case showcased a modern day application of a juvenile adjudication under the Three Strikes law. Both the Sixth District Court of Appeal,[308] in its first opinion and on reconsideration, and the California Supreme Court,[309] relied heavily on a multitude of United States Supreme Court decisions.[310] This reliance, although relevant in creating a legal foundation, clouds the main flaw in the system; a clear legal holding does not exist on whether juvenile adjudications constitutionally count as prior convictions under California's Three Strikes law.

Here, the Sixth District Court of Appeal and the California Supreme Court analyzed the most relevant United States Supreme Court decision in an attempt to address the above flaw.[311] Both courts differed in their interpretations. Although the Sixth District Court of Appeal's interpretation of *Apprendi v. New Jersey*[312] was overruled,[313] its opinion, arguably, is the better application. Juvenile adjudications do not traditionally fall within a conviction, they do not create the same recidivism, and they do not receive the appropriate constitutional safeguards to be treated like a conviction. Thus, legally a juvenile adjudication's use under the Three Strikes law is impermissible.

Additionally, the social justice implications represent a lack of understanding of juveniles. The juvenile justice system was specifically created to help guide the juvenile through rehabilitative measures. But this system weakens as more punitive measures are sought in place of rehabilitation. California's Three Strikes law, as applied to juveniles, is unjust and is leading the juvenile justice system further away from the traditional goals of correcting the youth's condition and closer to mirroring the adult criminal system.

---

308. People v. Nguyen, 146 Cal. App. 4th 1332 (2007); People v. Nguyen, 152 Cal. App. 4th 1205 (2007).

309. People v. Nguyen, 209 P.3d 946 (2009).

310. *See generally McKeiver*, 403 U.S. at 528; *see generally Almendarez-Torres* 523 U.S. at 224; *see generally Jones* 526 U.S. 227; *see generally Apprendi* 530 U.S. at 466

311. People v. Nguyen, 146 Cal. App. 4th 1332 (2007); People v. Nguyen, 209 P.3d 946 (2009)

312. Apprendi v. New Jersey, 530 U.S. 466 (2000).

313. *Nguyen*, 152 Cal. App. 4th at 1239.